IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12115 of 2000
with
SPECIAL CIVIL APPLICATION No 1656 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE R.S.GARG

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

SURESH ARJUN MAHALE

Appearance:
1. Special Civil Application No. 12115 of 2000
MR ARUN D OZA, GOVERNMENT PLEADER for Petitioner
MR IS SUPEHIA for Respondent No. 1
RULE SERVED BY DS for Respondent No. 1,2,4-3
MR HS MUNSHAW for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE R.S.GARG

Date of decision: 19/04/2005

ORAL JUDGEMENT

#. Heard learned counsel for the parties.

#. State Government being aggrieved by the order dated 23rd August, 1999, passed in Appeal No. 31/98/2663 by the Gujarat Civil Services Tribunal, under which the Appeal No. 31/98 filed by Shri Chandrasinh Naranbhai Rathwa and the Appeal No. 32/98 filed by Shri Suresh Arjun Mahale were allowed and the State was directed to provide employment back to the respondents, is before this Court. It is to be noted that Special Civil Application No 12115 of 2000 is the writ application filed against Shri Suresh Arjun Mahale and at the request of the parties, I called for the records of Special Civil Application No.1656 of 2001, wherein the order passed in favour of Shri Chandrasinh Naranbhai Rathwa has been impugned. The facts in nutshell are that the employees were appointed by the concerned Panchayats in accordance with the powers conferred upon them under the Gujarat Panchayats Act, 1961 as they were to manage the Community Health Centres. Each of the employee was appointed as a Cook in the year 1988 or so. They continued to work for a period of more than five years. On 18.6.1993, the Government of Gujarat, Health & Family Welfare Department, issued a notification exercising the powers conferred upon it under Section 158C of the Gujarat Panchayats Act, 1961. After consulting the State Council for Panchayats, it was thought desirable by the State Government that it became necessary to withdraw the powers, functions and duties in respect of the said Community Health Centres from the District Panchayats from the appointed date i.e. 18th June, 1993. The government withdrew the powers, functions and duties in respect of the said Community Health Centres with effect from the date of issue of the notification and transferred the powers to the State Government. The government took over the posts specified in Schedule II appended to the notification and transferred the posts specified in Schedule II appended to the notification under the State Service. With effect from 18th June, 1993, the posts to which the appointments were made by the concerned Panchayats were taken over by the State Government and the posts also were transferred to the State Services.

#. On 30th June, 1993, the Commissioner, Health, Medical Services and Medical Education issued a clarificatory note observing that the posts taken over by the State and transferred to the government would be final, but the persons appointed to such posts would be continued to be on deputation with the State Government on the respective posts and after such posts so taken over by the State

Government are filled by regular appointment, all persons who have come from the Panchayat Services/Community Health Centres would be repatriated. It appears that somewhere in the year 1995, the State government abolished the post of Cook and repatriated the petitioners to the concerned Jilla Panchayats. The Jilla Panchayats refused to accept those persons saying that they had no such posts in Jilla Panchayat with a further clarification that the post of Cook was created for Community Health Centres only.

#. As the employees became jobless, they filed Appeal Nos. 31 and 32 of 1998 before the Tribunal. The State Government submitted that in light of the clarificatory note dated 30th June, 1993, employees had no right to continue and the State Government was absolutely justified in repatriating them. The Tribunal negativing the contention observed that once the post was transferred and was taken over by the State Government, then the concerned employees who were occupying the office/post would also stand transferred to the State Cadre and State Services. It accordingly directed the Commissioner, Health, Medical Services to reinstate the appellants with continuity of service for terminal benefits and report to the Tribunal. The State being aggrieved by the said order is now before this Court.

#. Learned counsel for the State submitted that the posts were taken over and the same were transferred to the State Services but the employees were not, and if that be so, the Commissioner was justified in issuing the clarificatory order. It was also submitted that the State Government could not be compelled to continue with them who were not appointed by the State Government. Learned counsel for the employees on the other hand, submitted that they were appointed on regular basis, their appointments were never faulted with and if a particular cadre including the services were taken over by the State Government then, not only the post, but the incumbents with all their rights would also become member of the State Services. It was also submitted that the clarificatory note dated 30th June, 1993 is beyond the competence of the Commissioner.

#. The notification dated 18th June, 1993 has been issued by the State Government in exercise of powers conferred upon it by Section 158C of the Gujarat Panchayats Act, 1961. If any clarification was required or any addition was to be made to the notification, then yet another notification was to be issued by the State Government in exercise of its powers under Section 158C

of the Gujarat Panchayats Act, 1961. It is trite law that when an authority/State exercises its statutory powers, then any amendment can be made by the very same authority and by none else. In the present matter, the clarificatory order dated 30th June, 1993 has been issued by the Commissioner. The Commissioner, in the considered opinion of this Court, cannot be equated with the State Government. He might have his own powers in the Setup on which he is holding the post of the Commissioner, but for the purposes of the Panchayats Act, he is nobody, rather is a non-entity under the Panchayats Act. The State Government had issued the notification observing that it was necessary to withdraw the powers, functions and duties in respect of the said Community Health Centres from the District Panchayats. This authority is conferred upon the State Government only and none else can exercise such powers. If the State Government had taken over the posts specified in Schedule II appended to the notification and transferred the posts specified in Schedule II under the State Services, then, no administrative officer could qualify the notification by observing that the transfer of the post would be an administrative act under Section 158C and transfer of the staff would be on deputation. If the State wanted to transfer the staff on deputation, then, it was for the State Government to say so. If the State has not observed that the incumbents are transferred on deputation and they can be repatriated, by executive fiat, such order could not be issued by the Commissioner.

#. So far as the transfer of the post and non-transfer of the employees is concerned, the argument must be rejected immediately. It is to be seen that the government did not simply take over the posts, but it had transferred the posts under the State Services, meaning thereby that the State Cadre was inflated to the extent of those posts which were taken over by the State Government from the Community Health Centres. If the posts are transferred and there is no reservation in relation to taking over the services of the employees, then the notification is to be given its true effect. Transfer of the post would include transfer of the employees, because, the State Government did not reserve any right unto it that the employees would be transferred on deputation and they can be repatriated.

#. It is also to be seen that while issuing the notification, the State Government did not say that such persons who were occupying the post in the Community Health Centres would continue to be the employees of all concerned District Panchayats. It is nobody's case that

such posts were to continue with the District Panchayats. Once the posts are transferred and no posts are left with the District Panchayats, then repatriation to non-existing post would be mockery of the exercise of the administrative powers by the authority. The Tribunal was absolutely justified in granting the appeals of the employees. The writ applications are dismissed with costs of Rs.2000/= (Rupees Two Thousand) in each case. Interim order of stay is vacated. It is expected of the State Government that they will comply with the direction issued by the Tribunal at their earliest and relieve the public exchequer of the burden of the salary which they are required to pay to the employees even when they are not working with the State. Rule is discharged in each of the writ applications.

[R.S. GARG, J.]

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